

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUL 30 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

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)  
) Replacement of Part 90 by  
) Part 88 to Revise the  
) Private Land Mobile Radio  
) Services and Modify the  
) Policies Concerning When

PR Docket No. 92-235

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## S U M M A R Y

The Industrial Telecommunications Association, Inc. ("ITA"), the Council of Independent Communication Suppliers ("CICS"), and the Telephone Maintenance Frequency Advisory Committee ("TELFAC") urge the Commission to implement the timeframe for conversion to narrower channel bandwidths specified in LMCC's Consensus Plan. ITA/CICS/TELFAC note that there was widespread support in the comments for the Consensus Plan timetable.

ITA/CICS/TELFAC urge the Commission to consolidate the nineteen individual private land mobile radio services into four service pools. ITA/CICS/TELFAC believe that alternative proposals to create five or six service pools will engender confusion in the industry and lead to unnecessary inefficiencies.

ITA/CICS/TELFAC request that the Commission implement a system of true competition among the certified frequency coordinators. ITA/CICS/TELFAC believe that MRFAC's proposed alternative of permitting competitive coordination within pools of "like" services is neither efficient nor necessary.

ITA/CICS/TELFAC oppose AMST's suggestion that the Commission revisit the Docket No. 18261 decision permitting land mobile users to use "borrowed" UHF-TV spectrum. This suggestion is contrary to the public interest and should be rejected without consideration.

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Services and Modify the )  
Policies Governing Them )

To: The Commission

JOINT REPLY COMMENTS  
OF THE  
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.,  
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS AND  
TELEPHONE MAINTENANCE FREQUENCY ADVISORY COMMITTEE

Radio Services. To accomplish this revision, the Commission proposes to replace Part 90 with a new Part 88. The proposed Part 88 represents the FCC's attempt to "refarm" the private land mobile radio spectrum.

2. ITA, CICS, and TELFAC have reviewed the comments filed in this proceeding. Based on this review, we have prepared these Reply Comments to address the responses of various commenters to the Commission's proposals.

II. THERE IS GENERAL AGREEMENT IN THE COMMENTS WITH LMCC'S CONSENSUS PLAN FOR IMPLEMENTATION OF NARROWER CHANNEL BANDWIDTHS.

3. The Joint Commenters note that the comments demonstrate widespread support for LMCC's recommended progression to narrower channel bandwidths. LMCC's Consensus Plan was predicated on mandatory implementation of narrower bandwidth channels for both the 421-512 MHz and 150-174 MHz bands in the year 2004. LMCC adopted this position in recognition of the need for "a graceful transition to accommodate the need for gradual system changeout, utilization of imbedded investment and sufficient planning cycles for system replacement."<sup>3</sup>

4. The comments reflect near unanimous agreement with the conversion timeframe recommended in the Consensus Plan. The vast majority of commenting parties support a transition plan that

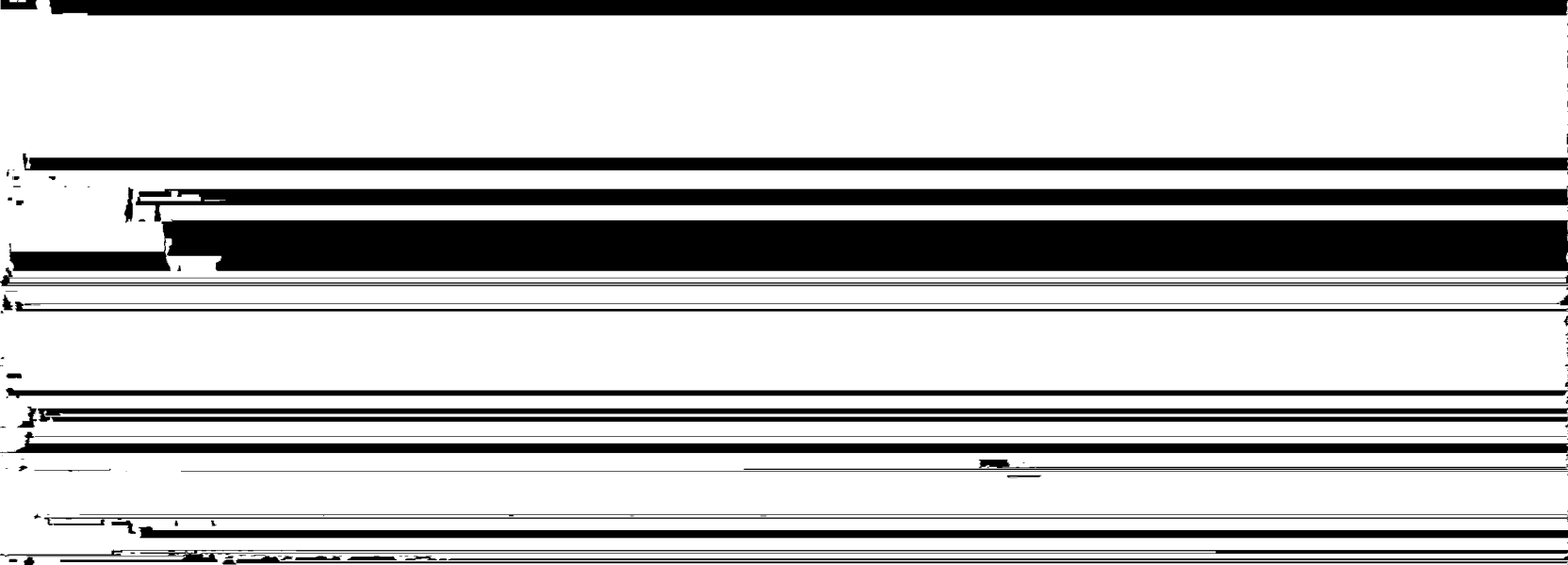
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<sup>3</sup> LMCC Consensus Plan, pp. 6-7.

will permit realistic amortization of existing equipment and minimize the disruption that would otherwise result from an abrupt conversion deadline. Accordingly, the Joint Commenters urge the Commission to adopt the year 2004 as the mandatory deadline for users' initial conversion to narrower bandwidth channels.

5. The Joint Commenters note that the Association of American Railroads ("AAR") has proposed an alternate arrangement for implementing narrower bandwidth channels in the VHF band. AAR's "offset overlay" plan is based on the rechannelization of the 150-174 MHz band into 12.5 kHz channels that would be offset by 7.5 kHz from current channels.

6. While the full effect of AAR's plan is unknown at this stage, the Joint Commenters are concerned that implementation of AAR's alternative may work to deny other services access to the "new" channels that would be offset from existing Railroad Radio Service frequencies. The Joint Commenters believe that the new channels created by the conversion to narrower bandwidths should



III. THE FCC SHOULD CONSOLIDATE THE EXISTING RADIO SERVICES INTO FOUR SERVICE POOLS.

7. Of all the issues raised in the Commission's Notice, the proposal to consolidate radio services seems to have generated the widest variation in responses.<sup>4</sup> The Joint Commenters appreciate the difficult task which the Commission faces in trying to assess which consolidation proposal will best serve the public interest.

8. The Joint Commenters have examined closely the various proposals for consolidation. A minority of the commenters urge the Commission to retain the existing structure of nineteen different radio services.<sup>5</sup> Of those commenters favoring consolidation, there is very limited support for a structure consisting of six service pools.<sup>6</sup> The consensus, however, seems to have formed around either four pools<sup>7</sup> or five pools<sup>8</sup>.

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<sup>4</sup> Appendix A of these Reply Comments provides a summary listing of the major consolidation alternatives contained in the comments.

<sup>5</sup> The comments of the American Trucking Associations, Inc. ("ATA") are illustrative of this view.

<sup>6</sup> Consolidated comments of American Trucking Associates, Forest Industries Telecommunications, International Taxicab and Livery Association, and Manufacturers Radio Frequency Advisory Committee.

<sup>7</sup> The consolidated comments of the Industrial Telecommunications Association, Council of Independent Communication Suppliers and Telephone Maintenance Frequency Advisory Committee as well as the individual comments of E.F. Johnson and the Association for Maximum Service Television support a structure of four pools.



9. The Joint Commenters recognize that there is no one "right" answer to the consolidation issue. There are only considerations which argue in favor of some alternatives and against others. Nor is there agreement on which considerations are relevant to this issue. There is general agreement in the comments, however, that the existing structure of nineteen services is too unwieldy.<sup>9</sup> In this respect, the remaining alternatives, whether four, five or six pools, represent an improvement over the existing structure.

**A. Neither Historical Developments Nor Exposure to Hazardous Conditions Provides A Useful Basis for Consolidating Services.**

10. Some commenters urge the Commission to reach its decision on the basis of the frequency sharing patterns that have developed over time among the nineteen individual radio services. ITA/CICS/TELFAC disagree with this approach. Without a more compelling rationale, the future structure of the private radio services should not be reduced to a simple reflection of past

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<sup>8</sup> The American Petroleum Institute, Utilities Telecommunications Council and National Association of Business and Educational Radio support a structure of five pools.

<sup>9</sup> The sharing of frequencies among different radio services never reached full potential due to the structure in place and cumbersome administrative rules. Had interservice sharing materialized to a greater extent, it is possible that the individual radio services recognized under Part 90 might not have impeded efficient spectrum utilization. As it is, however, the current structure is inherently inefficient.

practices or historical developments.<sup>10</sup> Using the sharing patterns that have developed over time as the model for the regulatory regime of the future ignores the fact that the demands of society change over time.<sup>11</sup>

11. Similarly, the fact that some industries may involve a lesser or greater degree of hazardous situations is not a proper basis on which to assign specific radio services to different pools under Part 88. While hazardous conditions are inherent in many activities of power utilities and petroleum companies, there

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<sup>10</sup> ITA, CICS, and TELFAC still adhere to the view, as the Joint Commenters [SIRSA (now "ITA"), NABER, API, AMTA, CICS, and TELFAC] stated in their 1/15/1992 comments in PR Docket No. 91-170, that "past land mobile history is relevant for the lessons it has provided, but not necessarily for the regulatory structure and application procedures it has spawned." (Joint Comments at p. 5.) To use sharing patterns as the basis for defining service categories seems particularly ill-advised in light of the fact that procedures put into place for sharing frequencies among different radio services never fully developed to the extent anticipated.

<sup>11</sup> The rapid pace of technological developments over the past two decades tends to obscure the fact that in the post-World War II environment, when many of the current nineteen radio services were being established, the needs of society were dramatically different. The Commission's Annual Report, for the year ending June 30, 1945, explained the need for police frequencies with the following example: "The increase in speed of travel provided by the automobile and other modern vehicles makes it possible for a criminal to commit a crime in one city and seek refuge in another community hundreds of miles distant. The use of two-way radio by the police departments offers a primary means of effectively keeping ahead of the criminal." FCC Eleventh Annual Report, p. 61. Times do change and, with them, the needs of society. We obviously live in a radically different era, when the thought of a criminal escaping by automobile to another city is neither noteworthy nor the most prominent concern of police departments. Arrangements that proved suitable in 1945 should not be used to justify the future structure of the private radio services.

- 7 -

are also utility and petroleum systems that are used for  
relatively innocuous activities such as dispatching and data

13. The Joint Commenters believe the following considerations provide a sound analytical framework for the consolidation of radio services:

- a. The consolidation of radio services should be based on (a) the identifiable needs of the current era, and (b) to the extent possible, an assessment of the needs that will arise in the coming years.
- b. All other factors being equal, the consolidation should parallel previously established similar

the private radio services was still being developed. However, the essential character of the private radio services has been well-established for some time now. A new, more flexible structure is required to guide the private radio services in the future. Consistent with this view, the idea of indefinitely retaining the existing nineteen radio services did not receive significant support in the comments.

15. If the concept of preserving the nineteen current radio services is not appropriate, then any proposal to exempt certain of the nineteen radio services from the consolidation effort is also suspect. The Joint Commenters reach this conclusion particularly with reference to the Railroad Radio Service. The Association of American Railroads requests the Commission to exempt the railroad frequencies from consolidation because of "three unique aspects of the railroad industry," namely, the requirement for nationwide interoperability, safety requirements, and the railroads' role in facilitating international commerce.

16. The Joint Commenters do not dispute the critical role which the railroads play in bringing essential goods to the American public and providing necessary inter-urban transport. However, virtually all of the industries to be licensed under Part 88 can claim to be unique in one way or another. Most industries operate under requirements, imposed by either federal or state law, mandating the use of communication systems to

protect the public welfare. The railroads are not unique in this respect. If the Railroad Radio Service must be maintained in its present state, then there would seem to be little purpose in attempting to consolidate other major radio services.

**D. There Are Deficiencies Inherent In The Various Proposals To Establish Either Six Or Five Pools.**

17. The Joint Commenters believe that the suggestion to establish six service pools is deficient, for two principal reasons. First, this approach did not receive widespread support among the commenters. Second, this approach would needlessly divide the industrial radio category into three different subgroups, industrial/utilities, special industrial, and business. As a practical matter, there seems little purpose to be served by this subdivision. Users would be endlessly confused as to the distinctions between the various subgroups.

18. The comments supporting a five-pool structure all assume a need to create two different categories of industrial services. NABER proposes "Industrial I" and "Industrial II". UTC offers a variation on that same approach, with a "Public Service Industrial" pool and a "Special Industrial" pool. Finally, API favors an "Industrial Safety" pool and a "Non-commercial" pool.

19. The Joint Commenters agree with E. F. Johnson that "five is still too many pools".<sup>13</sup> E. F. Johnson's solution is "consolidation of the two Industrial pools proposed by NABER so that the Industrial pool would include the current Forest Products, Motion Picture, Special Industrial, Telephone Maintenance, Relay Press, Utilities, Petroleum and Manufacturers Radio Services."<sup>14</sup> The Joint Commenters think this suggestion is logical.

20. Users do not want to be slowed by either regulations or nomenclature that defy easy interpretation. Without an accompanying explanatory text, NABER's "Industrial I" and "Industrial II" pools convey no hint as to which entities would be eligible in either pool. The same can be said for UTC's "Public Service Industrial" and "Special Industrial" pools. All of the current radio services are "special" in one sense or another, or else the Commission would not recognized them as discrete radio services under Part 90. For this reason, ITA/CICS/TELFAC do not believe the term "special industrial" or similar terminology would have any continuing validity under Part 88.

21. API's "Industrial Safety" and "Non-commercial" pools suffer from similar defects. The term "non-commercial" defies

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<sup>13</sup> Comments of E. F. Johnson, p. 18.

<sup>14</sup> Id.

easy explanation. Without a special interpretation, a user will not be able to ascertain whether a "non-commercial" pool is his or her appropriate eligibility category.

22. The Joint Commenters find that the various proposals to



efficiency. According to the service definitions suggested by UTC, the result would be the same. Mining companies would be eligible in UTC's proposed Public Service Industrial, Special Industrial and Business pools. Under this specific example, and for other reasons cited above, the Joint Commenters conclude that establishing five or six different pools is not in the public interest.

**E. Four Pools Represent The Optimum Structure.**

24. In the end, the Joint Commenters settle upon four pools as the optimum structure. We reach this conclusion principally for two reasons: (1) as suggested above, the proposals to establish five pools all are burdened by inherent deficiencies, and (2) a structure of four pools would parallel the existing arrangement for the 800 MHz and 900 MHz bands.

25. The Commission should not underestimate the importance of adopting a structure with which the public is already familiar. Users have had a period of several years to become acquainted with the pool arrangement at 800/900 MHz. This pool structure has meaning, both in terms of a user trying to identify the appropriate frequencies for its system and in terms of a society with a strong distaste for distinctions which are not readily understandable. To the users of the 1990's, there is comfort and convenience in duplicating regulatory structures that

are already in place.<sup>16</sup>

26. It is also important to note that the structure of four pools has meaning to major manufacturers of private radio equipment. These manufacturers typically orient their customer-related activities around four basic user groups: public safety, industrial, private carrier, and business. The manufacturers custom design their products and marketing practices to accommodate the unique requirements of each of these four groups.

27. As stated in their earlier Comments, the Joint Commenters recommend that four pools be established, to be identified as follows: (1) Private Industrial, (2) Specialized Mobile Radio, (3) Business/General Category, and (4) Public Safety. This approach is efficient, avoids the untidy aspects of trying to distinguish between two or three subgroups of industrial frequencies, and provides an analogous situation to

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<sup>16</sup> The Joint Commenters note that, in PR Docket No. 93-60, the Commission has proposed to conform the interference protection criteria for 800/900 MHz SMR and non-SMR systems. The Commission initiated this effort "because to have separate protection criteria for SMR and non-SMR systems is restrictive, potentially confusing, and also burdensome from a licensing standpoint". Notice of Proposed Rule Making, adopted March 11, 1993, 58 Fed. Reg. 19396 (April 14, 1993), paragraph 9. Similar considerations apply with respect to the pool arrangements above and below 800 MHz. By consolidating the radio services below 800 MHz in a manner which parallels 800/900 MHz, the Commission will avoid creating an additional, confusing and overly restrictive structure. For the user, this would simplify the process of identifying frequencies for a system, completing the application, and obtaining frequency coordination.

the pool arrangement for the 800 MHz and 900 MHz bands.

28. Further segregation of radio services into more than four pools will jeopardize the goals of the Commission's refarming effort. The Notice in this proceeding is predicated on introducing spectrum efficiencies in an environment of user flexibility. Additional layers of radio services or pools, beyond the well-established 800/900 MHz categories, will introduce additional complexity into the process. This added complexity, in turn, will militate against user flexibility.

29. The Joint Commenters firmly believe that the introduction of new technologies demands a new frequency management environment. By establishing four pools as recommended above, the Commission would be providing an environment which is new and streamlined, conducive to change, supportive of advanced technologies, and yet familiar to existing users of the spectrum. For the reasons stated above, the Joint Commenters believe that a structure of four pools will foster efficient use of the new spectrum and promote a balanced penetration of new equipment and technology into the marketplace.

IV. **THE COMMISSION SHOULD IMPLEMENT A SYSTEM OF TRUE COMPETITION AMONG COORDINATORS.**

A. **Competitive Coordination Provides Incentive For Frequency Coordinators To Offer A Quality Service.**

30. Competitive coordination will offer a strong incentive for each of the coordinators to provide the best service possible to applicants. Moreover, applicants will have a choice in the selection of coordinators, thereby having the option of circumventing a coordinator that is unable to provide satisfactory service.

31. In frequency coordination, as in other fields, competition is therapeutic. "(T)he unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress."<sup>17</sup> "Competition . . . encourages an efficient allocation of resources, stimulates efficiency and product innovation, and may even encourage the conservation of scarce resources."<sup>18</sup>

32. The Joint Commenters believe that competitive coordination will offer a strong incentive for each of the certified frequency advisory committees to provide the best

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<sup>17</sup> Northern Pacific Ry. Co. v. United States, 356 U.S. 1, 4 (1958).

<sup>18</sup> Robert N. Corley et al., The Legal Environment of Business 187 (1981).

services possible to applicants. The primary beneficiaries will

decisions. The frequency coordination process will work best when the user public has complete discretion to select those certified coordinators capable of providing the most satisfactory service.

35. ITA/CICS/TELFAC believe that all of the individual certified frequency coordinators should be able to accord to one another an appropriate level of mutual respect and cooperation. If individual coordinators develop bonds with one another that are in excess of that level, the Joint Commenters would have to question whether those coordinators are truly capable of giving the foremost priority to the interests of the applicants and users.

**C. The Commission Should Not Attempt To Influence The Internal Organization Of The Certified Frequency Coordinators Or Dictate Alliances Among Coordinators.**

36. NABER's comments urge the Commission to "encourage and facilitate" consolidations of frequency coordinating committees.<sup>20</sup> NABER also suggests that, in the case of consolidation of frequency coordinators, the Commission "should provide a structure to ensure continued representation of the coordinators for . . . users."<sup>21</sup> ITA/CICS/TELFAC do not believe there is any benefit in the Commission trying to function in the

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<sup>20</sup> NABER comments, p. 29.

<sup>21</sup> NABER comments, p. 31.

manner that NABER suggests. Subject to appropriate FCC oversight of their overall performance, the certified coordinators should retain the discretion to structure their organization and activities as they see fit.

37. The Commission should not be expected to dictate or influence consolidations of the certified coordinators or "provide a structure" to accomplish particular objectives. In the view of ITA/CICS/TELFAC, the Commission should limit its oversight to the broader issues of whether individual coordinators are acting in the public interest, providing a reliable and effective coordination service, and otherwise satisfying the requirements imposed in PR Docket No. 83-737.

V. THE COMMENTS OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION ARE UNFOUNDED.

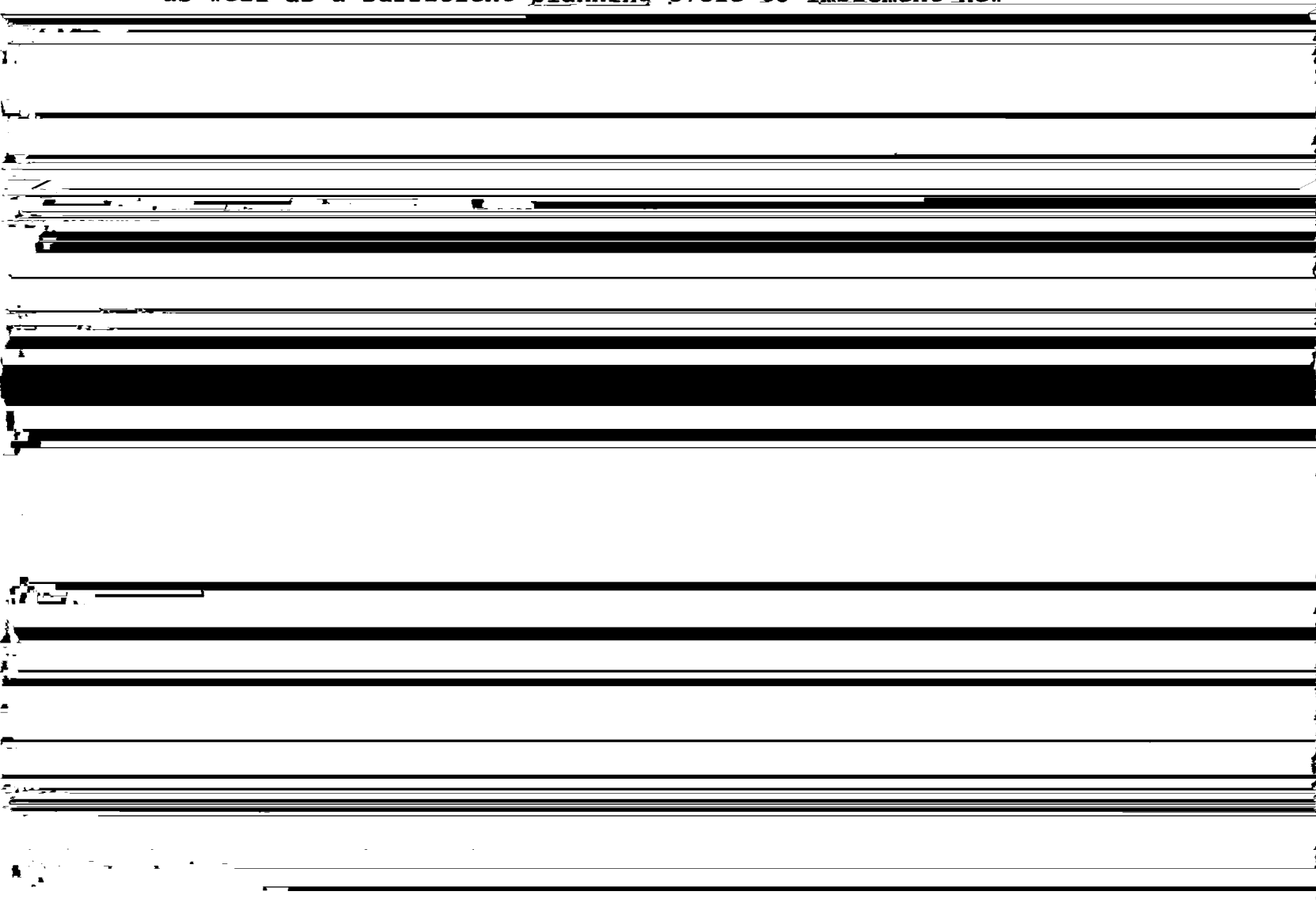
38. AMST urges the Commission to return to broadcast use

the UHF-TVL program that was "borrowed" in Docket No. 10261

spectrum inefficiencies. The Joint Commenters therefore urge the Commission not to give any deference to AMST's comments.

## VI. CONCLUSION

40. The Joint Commenters endorse the positions recommended in LMCC's Consensus Plan. The Joint Commenters note that the vast majority of commenters are supportive of the Consensus Plan. The Joint Commenters urge the Commission to adequately provide for the graceful transition and amortization of imbedded systems as well as a sufficient planning cycle to implement new





The Joint Commenters believe that MRFAC's proposed alternative of permitting competitive coordination within pools of "like" services is neither efficient nor necessary.

43. The Joint Commenters also urge the Commission to reject any suggestion that it should attempt to dictate alliances among the certified coordinators. ITA/CICS/TELFAC believe that the Commission should restrict its oversight of the certified coordinators to matters directly concerning the quality and effectiveness of the coordination service.

44. Finally, the Joint Commenters oppose AMST's suggestion that the Commission revisit the Docket No. 18261 decision permitting land mobile users to use "borrowed" UHF-TV spectrum. AMST's suggestion is contrary to the public interest. The Commission should likewise reject AMST's request to commence "refarming" of the 800 MHz band channels. AMST is ill-poised to offer meaningful comment on land mobile regulatory matters. Accordingly, the Commission should not give any deference to AMST's comments.